

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-216
FM Table of Allotments)	RM-10223
FM Broadcast Stations)	
(Valliant, Oklahoma))	
 Amendment of Section 73.202(b),)	 MM Docket No. 01-209
FM Table of Allotments)	RM-10224
FM Broadcast Stations)	
(Broken Bow, Oklahoma))	
 Radio One Licenses, Inc.)	 MM Docket No. _____
Amendment of Section 73.202(b))	RM-10495 ¹
FM Table of Allotments)	RM-10496 ¹
FM Broadcast Stations)	
FCC File No. 20010830ABN, as amended)	
(Valliant, Oklahoma))	

To: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

REPLY COMMENTS

Radio One Licenses, LLC (formerly known as Radio One Licenses, Inc.²) ("ROL"), by its counsel, and pursuant to FCC Public Notice, Report No. 2559, released July 1, 2002, hereby submits its comments in the above-captioned proceedings. ROL's reply relates to the comments of Maurice Salsa in MM Docket No. 01-216 and provides additional information for the

¹ These Reply Comments are being submitted pursuant to FCC Public Notice, Report No. 2559 released July 1, 2002 which provided: "The foregoing application and proposals of Radio One Licenses, Inc. will be treated as counterproposals in MM Docket No. 01-216."

² Pursuant to (lead) FCC File No. BAL-2001030AAU et al., Radio One Licenses, Inc. became Radio One Licensea, LLC on December 31, 2001.

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Commission to consider in resolving a conflict between ROL's application for modification of the facilities of Station KTXQ-FM at Gainesville, Texas, and the Commission's proposal to allot Channel 234C3 to Valliant, Oklahoma pursuant to a request for rulemaking filed by Maurice Salsa ("Salsa").³ In support hereof, ROL respectfully states as follows.

I. ROL Counterproposal In MM Docket No. 01-216 Should be Adopted

ROL hereby restates its request for the Commission to adopt the allocation scheme advocated in its Comments and Counterproposal filed in the Valliant Rulemaking proceeding. As is explained in greater detail below, Jeraldine Anderson's request for the allotment of Channel 232A at Broken Bow is defective and should not be considered in resolving the Valliant docket. Instead, the Commission should approve ROL's proposal either to allot a Class A to Valliant or a Class C3 with a site restriction and further, grant its request to modify the facilities of KTXQ-FM, as amended (FCC File No. BPH-20018030ABN).⁴

A. Class A Station Adequately Meets Needs of Valliant Community

In his Petition for Rulemaking, Salsa requests that the Commission allot a Class C3 station to Valliant as that community's first local service. In support of his request for the allotment of Channel 234C3, Salsa reports that Valliant has a population of over 850 people. However, according to the 2000 U.S. Census figures, the population of Valliant is actually 771 people. *See*, [www.http://factfinder.census.gov/servlet/BasicFactsServlet](http://factfinder.census.gov/servlet/BasicFactsServlet). In fact, over the last 20 years, the population of Valliant has steadily decreased from a high of 927 in 1980 to 873 in 1990 and 771 in 2000. *See U.S. Census Data, 1980, 1990, 2000.*

³ As the Commission is aware, there are numerous rulemaking proceedings that have been initiated by Salsa and several of his associates that are tied together in such a way that a global resolution is required. These dockets include MM Docket Nos. 01-209, 01-216, 01-255, 01-269. ROL has participated in each of these dockets and hereby incorporates by reference its Comments, Comments and Counterproposals, Reply Comments and Erratum to Reply Comments that ROL has submitted in each of these outstanding proceedings.

⁴ Effective June 6, 2002, the call letter for KTXQ has changed to KSOC(FM). For ease of reference, the station will continue to be referred herein as KTXQ-FM.

The land area of the City of Valliant comprises less than 2 square kilometers (approximately 0.75 square miles). See www.usacitiesonline.com. Valliant is approximately 100 miles from the nearest major city (Garland, Oklahoma), 50 miles from the nearest commercial airport (Paris, Texas) and approximately 90 miles from the nearest interstate highway (Interstate 30). The 1990 Civilian Labor Force was a total of 306 people, 276 of which were employed. There are three major employers in Valliant: the Valliant Public Schools, the Weyerhaeuser Company and Brown & Root (which provides maintenance support for the Weyerhaeuser plant). There are 2 motels in the city, 487 housing dwellings, 11 churches and one weekly newspaper. See Valliant Public School District Webpage, www.vpsd.org.

In his Reply Comments, Salsa argues that ROL's counterproposal to allot Channel 234A at Valliant must be rejected by the Commission because "Valliant, Oklahoma deserves a station that can be economically viable." *Salsa Reply Comments at 2*. ROL asserts that the allotment of a Class A station on Channel 234 is more than sufficient to serve the needs of the community of Valliant, and can adequately support what is at best, a limited advertising base. As is shown in Figure 1 hereto, the allotment of Channel 234A at Valliant will provide city grade (70 dBu contour) coverage to 7,208 people and 60 dBu contour coverage to 18,397 people in and around Valliant. In addition, Valliant currently receives 60 dBu service from at least eight radio stations. See Engineering Exhibit EE.

B. Site Restricted Class C3 at Valliant Serves More People

As explained infra, Salsa's assertion that ROL's counterproposal to site restrict Channel 234C3 at Valliant is defeated by the potential allotment of Channel 232A at Broken Bow, is procedurally defective. Moreover, Salsa's objection to a site restricted allotment on Channel 234C3 is disingenuous at best. A move to the east consistent with ROL's Counterproposal will

provide more city grade service to more people residing in Valliant and the surrounding communities. In fact, as detailed in Figure 1, at the coordinates suggested in ROL's Counterproposal for Channel 234C3, the Valliant signal would provide a city grade signal to nearly 7,500 more people than from the reference coordinates adopted by the Commission in the Valliant NPRM.

II. Allotment of Channel 232A at Broken Bow, OK is Procedurally Defective

On October 16, 2001, Jeraldine Anderson submitted a Petition for Rulemaking ("Anderson Petition") requesting that the Commission allot Channel 232A at Broken Bow, Oklahoma. As stated in the Anderson Petition, the potential allotment of Channel 232A at Broken Bow is contingent upon the withdrawal of Petition for Rulemaking (and termination of the rulemaking proceeding in MM Docket No. 01-191), submitted by Salsa ("Salsa Motion"). While the bona fides of the Anderson Petition are suspicious at best (see Section IV, infra), from a procedural standpoint, the Anderson Petition is defective and must be dismissed.

A. Anderson Petition is Not a Valid Counterproposal

As an initial matter, contrary to Salsa's assertions in his Reply Comments, the mere filing of the Anderson Petition does not preclude ROL from proposing the use of a site restriction on Channel 234C3 at Valliant, unless the Anderson Petition was itself a counterproposal. However, that would have required the Anderson Petition to have been filed before the deadline in another pending docketed rulemaking proceeding in which the counterproposal deadline passed before ROL filed its Comments and Counterproposal. ROL is not aware of any such proceeding, nor does Salsa (or the Anderson Petition) indicate the existence of any such proceeding that would afford the Anderson Petition cut-off status with respect to ROL's Comments and

Counterproposal. This alone provides the Commission with sufficient support to deny the Anderson Petition as procedurally defective. But there are other justifications as well.

B. Anderson Petition is a Prohibited Request for Contingent Commission Action

The Commission has long held that the acceptance of requests for contingent actions by the Commission is prohibited except in discrete circumstances. For example, Section 73.3517 of the Commission's Rules states that with the exception of a few, discrete circumstances: "[c]ontingent applications for new stations and for changes in facilities of existing stations are not acceptable for filing." 47 C.F.R. §73.3517. The basis for such restrictions is obvious. The Commission (and the public) must be able to rely upon the legitimacy of the requests for action before it and be confident that the actions it approves will be consummated. The Commission does not have the resources available to waste on evaluation, investigation, action, and in some cases denial of alternative proposals, that the proponents never intend to fulfill.

There is no place where the need for certainty in requests for action to be taken by the Commission is more important than in the rulemaking context. Rulemaking proceedings (like the instant proceedings) are often long and complicated, tying up many legal, engineering and administrative resources of the Commission. As available frequencies have become scarcer, rulemaking proceedings involve more channels and channel shifting, more licensees and parties than ever before and can take years to resolve.

The Commission does its best to honor the requests of legitimate petitioners and those suggesting reasonable counterproposals, and to prohibit attempts to waste valuable Commission resources. Indeed, one of the Commission's rules governing the rulemaking process specifically states that "[p]etitions which are moot, premature, repetitive, frivolous, or which plainly do not

warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.” 47 C.F.R. §1.401(e).

Assuming *arguendo* that the Anderson Petition for Broken Bow is not merely a frivolous request for action by the Commission,⁵ it should be dismissed as contingent and premature under Section 1.401(e) of the Rules. Clear precedent exists for such dismissal. In returning a petition for rulemaking that was contingent upon the licensing of authorized, but not yet completed modified facilities of an existing station, the Commission held:

[p]rocessing petitions for rule making which would rely on other events by third parties to effect the compliance of the proposal with the separation requirements is not conducive to the efficient transaction of Commission business and imposes unnecessary burdens on the administrative resources of both the Allocations Branch and the Audio Services Division. . . . This policy of not accepting petitions for rule making contingent on the licensing of facilities set forth in an outstanding construction permit will conserve Commission resources and enable us to process expeditiously the vast majority of rulemaking [sic] proposals which are not contingent.

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Cut and Shoot, Texas), 5 CR 447 (1996), emphasis added.

On its face, and by its own words, the Anderson Petition is contingent on the grant of Salsa’s Motion to Dismiss his Petition to add Channel 232C3 at Clayton, Oklahoma (“Salsa Motion”). Denial of the Anderson Petition would preserve Commission resources by allowing it to grant ROL’s Counterproposal to allot a site restricted Channel 234C3 to Valliant to provide that community with its first local service, and also granting ROL’s application for improved facilities at KTXQ-FM. Had the filing of the Anderson Petition been prohibited, the

⁵ As described in greater detail *infra*, the legitimacy of the Anderson Petition is questionable. Not only does it request allotment of a channel that relies upon the dismissal of the Clayton proposal, it seeks a channel that would preclude the use of the site-restricted Channel 234C3 and the grant of ROL’s modification, when another channel at Broken Bow (Channel 265A) was available at the time Anderson filed her petition proposing Channel 232A.

Commission would have been spared the “unnecessary burden on the administrative resources of the Allocations Branch” in considering ROL’s attempts to find global solutions to allotment requests in the Valliant docket (MM Docket No. 01-216) which in turn, is tied to the Broken Bow proceeding (MM Docket No. 01-209), which in turn, is tied to the Counterproposal by KTCY to modify its license to Channel 285C0, which in turn is tied to the Wright City proceeding (Docket No. 01-225), which in turn is tied to Antlers proceeding (MM Docket No. 01-269). And ROL would not have needed to file Comments, Comments and Counterproposals and Reply Comments in each of these dockets to protect its interest in modifying KTXQ-FM. Similarly, the Commission would have been spared the need to wade through the many pleadings that have been filed in each of these proceedings by the many participants now involved.

There is further evidence that the Anderson Petition is defective. There is no indication that the Commission has ever accepted it. There is no docket number associated with the Anderson Petition, nor has it been assigned a valid rulemaking number. The procedural explanation for this is clear. The Commission cannot initiate a rulemaking proceeding for the allotment of Channel 232A at Broken Bow because it conflicts with an active rulemaking proceeding to allot Channel 232C3 at Clayton. The public interest argument for the Commission’s failure to initiate a rulemaking is equally clear. No member of the public (other than a Salsa intimate) would know of the availability of Channel 232A at Broken Bow, or any other community that would have conflicted with the Clayton Petition, prior to removal of the potential allotment of Channel 232C3 at Clayton from the Commission’s database following official action on Salsa’s Motion to Dismiss. To allow Anderson an exclusive opportunity to

seek the allotment of Channel 232A at Broken Bow because of her “inside information” would be inherently unfair.

III. Section 307(b) Favors Allotment of Site-Restricted Channel 234C3 at Valliant

Even if the Anderson Petition is not considered procedurally defective as either an untimely-filed counterproposal or as contingent and thus, prematurely filed under Section 1.401(e), it should be denied on substantive grounds as comparatively inferior. Allotment of Channel 232A at Broken Bow would be the community’s third FM service. Broken Bow, a community of less than 4,300 people, already has one FM station operating on Channel 291C2. *See* [www.http://factfinder.census.gov/servlet/BasicFactsServlet](http://factfinder.census.gov/servlet/BasicFactsServlet). As set forth in Exhibit Engineering Exhibit EE-RM, Broken Bow currently receives service from five FM stations. Moreover, the Commission is presently considering the allotment of Channel 285A to Broken Bow pursuant to a Petition for Rulemaking that was also filed by Salsa in MM Docket No. 01-209.

Under criteria established by the Commission, the allotment of Channel 232A at Broken Bow would be unwarranted. As ROL has previously stated, because ROL’s proposed resolution by use of a site restriction in the Valliant rulemaking conflicts with the use of Channel 232A at Broken Bow, these proposals are mutually exclusive and the Commission must consider the comparative merits of ROL’s proposal as a timely-filed counterproposal in any proceeding it might ultimately initiate to consider the Anderson Petition. *See ROL’s Reply Comments in MM-Docket Nos. 01-216 and 01-209, filed November 6, 2001 and previously incorporated herein by reference.* As such, the Commission would be required by Section 307(b) of the Communications Act to evaluate ROL’s proposal against the Anderson Petition and to weigh the comparative merits of each proposal.

In doing so, the Commission must consider the four allotment criteria: (1) provision of first full-time aural reception service; (2) provision of second full-time aural reception service; (3) provision for first local transmission service; and (4) provision for other public interest factors in order to fulfill its Section 307(b) mandate. *See, Revision of FM Assignments Policies and Procedures*, 90 FCC 2d 88 (1982). Because the allotment of Channel 232A at Broken Bow would be that community's third local service, the first three priorities are not relevant in this case and the Commission must consider the public interest benefits to be gained from each proposal.

ROL submits that the public interest is far better served by approving ROL's proposed allotment of a frequency at Valliant, together with the improvements at KTXQ-FM than by allotting a third channel at Broken Bow. For example, if ROL's allotment scheme is adopted, the proposed site-restricted Channel 234C3 will provide city grade, first local service to 18,857 people in Valliant, Oklahoma. Approval of the site-restricted Channel 234C3 at Valliant will permit the Commission to grant ROL's pending modification application for KTXQ-FM, allowing it to relocate the station to a taller tower. Under ROL's proposal, Broken Bow will have two available channels allotted to it, including an existing Class C2 FM station. Moreover, the community will continue to receive service from five existing FM stations. ROL submits such an allotment scheme more than adequately serves the needs of Broken Bow's less than 4,300 people.

By contrast, if the Anderson Petition and Salsa proposal for Broken Bow and Valliant, respectively, are adopted, Channel 234C3 will -- once the channel is made available through the Commission's yet-to-be determined auction process -- provide city grade, first local service to 11,389 people in Valliant (nearly 7500 fewer people than under ROL's proposal). No additional

people will receive improved service from KTXQ-FM and the less than 4,300 people at Broken Bow will have two vacant Class A FM allotments that may be awarded and may be constructed at some time in the future.

ROL submits that the Commission's choice is clear under the Section 307(b) analysis. The public interest benefits to be gained from allotting a first local service on Channel 234C3 at Valliant from the site-restricted location proposed by ROL and granting the improvements at KTXQ-FM far outweigh any benefits that might be obtained from allotting the non-site restricted Channel 234C3 proposed by Salsa and the third local service on Channel 232A at Broken Bow by Anderson.

IV. The Commission Should Consider the Potential Misuse of Its Rulemaking Process

ROL submits that the Commission should examine the potential misuse of its rulemaking procedures that result from the apparently coordinated efforts and collective thinking of Messrs. Salsa, Charles Crawford, Robert Fabian, and Ms. Linda Crawford, Ms. Jeraldine Anderson and Ms. Katherine Pyaett (the "Salsa Group") in participating in the Commission's rulemaking processes. Together, the Salsa Group has filed nearly 300 Petitions for Rulemaking since January of 2001.⁶ Many of the petitions appear to have been created on the same typewriter or computer. There are many similarities among the petitions and related filings, some of which are listed below:

- many have the same type-face for characters;
- all contain the same format: cover letter, the same Introduction ("Pursuant to 47 C.F.R. 1.401, ____ - respectfully petitions the FCC to institute a Rule Making proceeding to amend the FM Table of Allotments to add Channel ____ at ____");

⁶ This does not include the many Expressions of Interest, Comments and Reply Comments that have also been filed in each of these rulemaking proceedings by each of the parties. Nor does it account for the many, many requests for dismissal of petitions and withdrawal of expressions of interest. For example, on March 12, 2002, Mr. Salsa alone, filed 11 Motions to Dismiss previously filed Petitions for Rulemaking.

- the same “Discussion” section (“Petitioner respectfully submits that the public interest would be served by allocating Channel _____ to _____”);
- the same reference to the applicable channel study (“Attached hereto is a channel study confirming that Channel _____ can be allocated to _____, _____ consistent with the FCC’s FM separation rules.”), indeed all of the channel studies appear to be printed from the same printer using the same data base format;
- each of the Petitions commits that “Should this petition be granted, and Channel _____ be allotted to _____, _____ Petitioner will apply for Channel _____, and after it is authorized, will promptly construct the new facility”;
- each Petition concludes with the acknowledgment that “The information provided in this Petition for Rule Making is correct and true to the best of my knowledge”;
- each contains a “Respectfully submitted” signature line followed by the name and address of the petitioner and the phone number, which in each case is followed by “Tele”; and
- each contains in the “Sworn Affidavit” attached to the “standard” Motion to Dismiss filed by the Salsa Group members, with the language “I have concluded to request that the FCC dismiss my Petition/expression of interest” as No. 2.

ROL is not suggesting that participants in the Commission’s rulemaking processes are not permitted to submit petitions that are similar or in some cases, nearly identical, particularly when they are providing routine information. If that was where the similarity between the petitions filed by the Salsa Group ended there would be little cause for alarm. However, ROL has examined some of the nearly 300 proceedings where the group has requested Commission action in the last year and discovered that in many instances, the group has shared information that could have only been known between group members to frustrate the legitimate attempts by other participants to resolve conflicts. Such attempts have been repeatedly countered by the Salsa Group in ways that at best obfuscate, and at worst prevent the Commission from resolving outstanding proceedings that involve not just the Allocations Branch in the allocation of new frequencies, but also inhibit the ability of the Audio Services Division to process requests for changes to the facilities of existing broadcasters like ROL.

For example, in the instant docket, in response to ROL's Counterproposal to site-restrict Channel 234C3 at Valliant, Salsa stated in his Reply Comments that a site restriction was in conflict with the Anderson Petition's request for the allotment of Channel 232A at Broken Bow. However, the allotment of Channel 232A was not possible unless a previously filed Petition for Rulemaking seeking the allotment of Channel 232C3 at Clayton, Oklahoma (filed by Salsa) was withdrawn. As ROL has previously reported, the Clayton withdrawal was dated one day prior to the date on the Anderson Petition. However, the FCC's official date stamp on the Salsa's withdrawal is October 17, 2001, one day after the date of the Anderson Petition. *See Exhibit A attached hereto.* Thus, the only way that Anderson could have submitted a copy of Salsa's withdrawal with her Petition for Broken Bow (which to her, enabled her Petition to be filed consistent with the FCC's Rules), was for Anderson to have been alerted to the existence of the Salsa withdrawal and be given a copy of the yet-to-be filed pleading. Moreover, the channel that was proposed by (or for) Anderson for Broken Bow-- Channel 232A-- appears to have been deliberately selected to thwart ROL's attempt to site restrict Channel 234C3. Not only does the selection of Channel 232A create the potential for potentially devastating Intermediate Interference to the entire FM band because it is separated by 53 channels from Salsa's previously requested allotment of Channel 285A at Broken Bow (MM Docket No. 01-209), another channel --265A-- at Broken Bow, was available without creating the potential interference problem and would not have required the dismissal of Salsa's Petition to allot a new channel at Clayton. *See, ROL Reply Comments in Docket Nos. 01-216, 01-209, Engineering Exhibit EE-RM.*

There are other examples of how the Salsa Group demonstrates its use of "insider" information and gamesmanship:

- On December 3, 2001, Robert Fabian filed a Petition for Rule Making seeking the allotment of Channel 293C3 at Estelline, Texas. Mr. Fabian's Petition reports

that a conflicting request to allot Channel 293C3 to Crowell, Texas was withdrawn on November 29, 2001, one business day prior to the filing of the Estelline petition. That withdrawal (and the underlying petition) was filed by Katherine Pyaett.

- On November 13, 2001, Robert Fabian submitted a Petition for Rule Making seeking the allotment of Channel 236A at Cadillac, Michigan. Mr. Fabian's Petition reported that a conflicting proposal to allot Channel 236A at Highland, Michigan was withdrawn on November 1, 2001. However, the Motion to Dismiss Petition for Channel 236A at Highland was actually filed (and is date-stamped by the Commission) on November 2, 2001, six business days earlier, at a time when the Commission's mail, due to the Anthrax irradiation treatments, took weeks to arrive from the mail delivery site in Suitland, MD to the public files in the Commission's Reference Room. The Motion to Dismiss was filed by Charles Crawford.⁷
- On December 6, 2001, Robert Fabian filed a Petition for Rule Making seeking the allotment of Channel 255A at Chillicothe, Texas. Mr. Fabian's Petition reported that a request to withdraw the use of Channel 255C3 at Quanah, Texas had been filed on November 30, 2001. Mr. Salsa, who is a party to MM Docket No. 00-148, is shown as having been served a copy (by mail on November 30, 2001) of the withdrawal.
- On September 17, 2001, Charles Crawford filed a Petition for Rule Making seeking the allotment of Channel 291A at Rocksprings, Texas. Mr. Crawford's Petition reported that a conflicting proposal to allot Channel 291A to Barksdale, Texas had been returned by the Commission by letter dated September 7, 2001. In fact, the letter is addressed to Jeraldine Anderson and is date-stamped as having been "Received" in the Commission's mail room on September 12, 2001, two business days prior to the date of Mr. Crawford's Rocksprings petition.

Other parties have attempted to focus the Commission's attention on the way in which the Salsa Group has deluged the allocations processes. *See Reply to Partial Opposition to Motion to Strike filed by Joint Parties, in MM Docket No. 00-148, RM-9939 and RM-10198.* And the Commission has responded, requesting that the Salsa Group present evidence of its bona fides to pursue so many rulemaking proceeding simultaneously. *See March 1, 2002 Letter to Charles Crawford, from Roy Stewart, Chief, Mass Media Bureau, Exhibit B attached hereto*

⁷ It is noteworthy that in the Highland proceeding (MM Docket No. 01-242), the Commission did not act on Crawford's Motion to Dismiss until earlier this year. *See, Report and Order in MM Docket No. 01-242, RM-10248, released March 1, 2002, DA 01-489, see Exhibit C attached hereto.*

(*"Stewart Letter"*). In response to the Stewart Letter, Crawford took the position that the Commission is singling the Salsa Group out for unwarranted scrutiny. Although Crawford acknowledged that members of the Salsa Group are "acquaintances" who may have, "on occasion shared information about Commission rules, practices and procedures" he emphatically stated that he was "not responsible for any petitions for rule making which they may have filed. As far as I am aware, they were responsible for their own respective filings. They were not acting at my suggestion or request or on my behalf. I am responsible only for those petitions for rule making which I subscribed and submitted. Any suggestion to the contrary is inaccurate." *See Declaration Under Penalty of Perjury of Charles Crawford, emphasis in original, dated March 21, 2002, submitted in response to Letter from Roy Stewart, Exhibit D attached hereto.*

However, there is more than a suggestion, in fact there is evidence that at least Mr. Crawford has been involved in and perhaps responsible for, the disposition of petitions filed by other members of the Salsa Group. In December of last year the undersigned counsel received unsolicited telephone calls from Mr. Crawford. When Mr. Crawford finally reached the undersigned, he wanted to report that he was "getting out of Antlers" and withdrawing his petition.⁸ When told that the true concern of the undersigned's client was another proceeding in Texas, Mr. Crawford asked if it involved Salsa. Mr. Crawford then volunteered to contact Mr. Salsa to see if he would be "willing to go out for expenses." Two weeks later, Mr. Crawford left a message for the undersigned stating that Salsa was not willing to withdraw his Valliant petition because it was "central" to all of his other Oklahoma rulemakings, but might be willing to

⁸ On August 22, 2001, Crawford filed a Petition for Rule Making seeking to add Channel 284A at Antlers, Oklahoma. That proposal (MM Docket No. 01-269) prevented another of ROL's attempts to find a global solution to the allocations proceedings to which its modification application is tied. Crawford's Petition (and the subsequently filed Expression of Interest by Mr. Salsa) has been withdrawn. *See*, Motions to Dismiss Petitions filed respectively by Charles Crawford and Maurice Salsa on December 11, 2001.

withdraw all of his Oklahoma petitions for expenses. This call from Mr. Crawford was not returned by the undersigned.

This was not the first time that Mr. Crawford has attempted to interface for Mr. Salsa. In October of last year, Mr. Crawford called another member of the undersigned counsel's firm (who is no longer with the firm) after that attorney had placed a call directly to Mr. Salsa. In returning the call, Mr. Crawford stated that Mr. Salsa was out of the country and if there was anything that Mr. Crawford could do, to please call him. Similarly, calls to Mr. Salsa, who is not represented by counsel, by the undersigned have gone unreturned. Messages have been left on his answering machine (at the number indicated in his many pleadings) and one message left with a woman was promised to be delivered. As recently as June of this year, a woman "from Salsa's office" called the undersigned and left a message that he was out of the country for several weeks, but left his email address. No further contact has been attempted.

In sum, it is clear that the motivation behind the plethora of petitions for rulemaking that have been filed by the Salsa Group have not been solely for the purpose of providing new outlets of expression for underserved listening areas. Rather, the manner in which the Salsa Group has infiltrated the allocations process and manipulated the Commission's Rules is reprehensible and should be stopped.

V. Alternative Engineering Solution for Valliant

As has been previously reported by ROL and the Salsa Group, on August 22, 2001, Crawford filed a Petition for Rulemaking seeking the allotment of Channel 284A at Antlers, Oklahoma (MM Docket No. 01-269, RM-10249). On October 4, 2001, Salsa filed a Petition for Rulemaking seeking the allotment of Channel 265A at Albion, Oklahoma. By separate motions, both of the petitions have been withdrawn. On December 11, 2001 Crawford filed a Motion to

Dismiss his Antlers Petition. On the same day, Salsa simultaneously filed a Motion to Withdraw his expression of interest in Antlers and a Motion to Dismiss his Petition in Albion (Albion has not yet been docketed). *Assuming arguendo*, that the Commission eventually grants the requests by Salsa and Crawford to withdraw the potential allotments of Channel 284A at Antlers and Channel 265A at Albion, ROL submits that another engineering solution exists that permits the Commission to resolve and terminate the Valliant proceeding.⁹

Attached hereto as Engineering Exhibit EE-RM, is a proposal to allot a site-restricted Channel 262C3 at Valliant as that community's first local service. This allotment scheme should be preferred because it offers acceptable alternatives to the conflicting issues in the instant proceeding, allowing the Commission to separate the award of a first service at Valliant and the modification of KTXQ-FM from pending rulemakings involving Broken Bow (MM Docket No. 01-269) and Wright City (MM Docket No. 01-255, RM-10265). ROL submits that the following goals will be achieved by allotment of a site-restricted Channel 262C3 at Valliant:

1. Valliant will receive an allotment of a new C3 FM (albeit site-restricted) channel as that community's first local service;
2. Allotment of Channel 262C3 protects the potential allotment of Channel 265A at Broken Bow, Oklahoma, as counterproposed by KTCY Licensing, Inc., in MM Docket No. 01-209, and awards second service to Broken Bow consistent with Salsa's Petition for Rulemaking in MM Docket No. 01-209;
3. Allotment of Channel 262C3 protects the potential allotment of Channel 232A at Broken Bow as that community's third FM service, in a as-yet undocketed proceeding filed in a Petition for Rulemaking by Jeraldine Anderson on October 17, 2001.

⁹ The proposed solution also contemplates that the Commission will recognize that as a not yet docketed Petition for Rulemaking filed on November 9, 2001 by Jeraldine Anderson to allot Channel 265A at Millerton, Oklahoma, as having been filed after the close of consideration of comments and counterproposals in the instant proceeding and thus, subject to the eventual outcome of MM Docket No. 01-216.

As such, ROL requests in the alternative, that the Commission grant its alternative engineering proposal.


VI. Conclusion

ROL submits that the Commission can quickly dispose of the outstanding issues in the instant proceeding (MM Docket No. 01-216) by returning the Anderson Petition seeking the allotment of Channel 232A at Broken Bow as procedurally defective. With the 232A allotment at Broken Bow eliminated, the Commission is free to grant the Counterproposal set forth by ROL in the Valliant docket and allot either Channel 234A or a site restricted Channel 234C3 at Valliant. Choosing either solution serves the public interest by hastening the resolution of this proceeding, and, in the latter case, by awarding Channel 234C3 with the site restriction proposed by ROL, adding a channel that is designed to serve more people than originally proposed. Moreover, after action on the requests for withdrawal of the Antlers and Albion petitions, the Commission can grant the alternative engineering solution offered herein. In each case, the Commission can grant ROL's application for modification of facilities at KTQX-FM.

WHEREFORE, ROL respectfully requests that the Commission **GRANT** the Comments and Counterproposal set forth by ROL therein, **ALLOT** either a site-restricted Channel 234C3 or site-restricted Channel 262C3 to Valliant, Oklahoma and **GRANT** the application for modification of facilities at Station KTXQ-FM, in FCC File No. 20018030ABN, as amended.

Respectfully submitted,

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Its Attorneys

July 16, 2002

CERTIFICATE OF SERVICE

I, Margaret L. Truitte, a secretary in the law firm of Davis Wright Tremaine LLP, do hereby certify that I have on this 16th day of July, 2002, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Reply Comments" to the following:

R. Barthen Gorman
Federal Communications Commission
445 12th Street, SW
Room 3-A224
Washington, DC 20554

Maurice Salsa
5616 Evergreen Valley Drive
Kingwood, TX 77345
(Petitioner for Valliant, Wright City, and Broken Bow)

Jeraldine Anderson
1702 Cypress Drive
Irving, TX 75061
(Petitioner for Broken Bow)

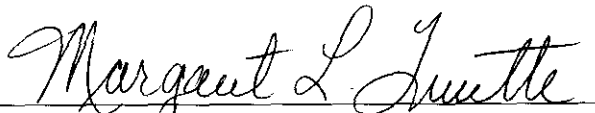

Margaret L. Truitte

Exhibit A

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

OCT 17 2001

FCC MAIL ROOM

In the Matter of)
)
Amendment of 73.202 (b))
Table of Allotments)
FM Broadcast Stations)
(Clayton, OK))

MM Docket No. 01-191
RM-10211

To: Kathleen Sheuerle
Allocations Branch
Mass Media Bureau

Motion to Dismiss Petition

I, Maurice Salsa, respectfully move that the FCC dismiss my Petition, in the above captioned proceeding, filed on or about July 10, 2001, to allot a new FM channel to Clayton, Oklahoma.

An appropriate Affidavit, required by 47 CFR 1.420(j), is attached hereto.

Respectfully submitted,



Maurice Salsa
5616 Evergreen Valley Drive
Kingwood, TX 77345
(281) 360-6932 Tele
(713) 741-5145 Fax

October 15, 2001
ClayDis